

**United States Department of Labor
Employees' Compensation Appeals Board**

J.T., Appellant

and

**DEPARTMENT OF THE NAVY, PUGET
SOUND NAVAL SHIPYARD, Bremerton, WA,
Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 12-349
Issued: June 18, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 8, 2011 appellant filed a timely appeal from a November 4, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant was entitled to hearing aids for his accepted binaural hearing loss.

FACTUAL HISTORY

On August 17, 2011 appellant, then a 61-year-old metals examiner, filed an occupational disease claim alleging that he sustained hearing loss as a result of working around loud noises at

¹ 5 U.S.C. § 8101 *et seq.*

work.² He became aware of his condition and its relationship to his employment on January 1, 2005. Appellant retired on July 3, 2010. He submitted various audiograms dated from August 10, 1983 to February 12, 2001.

Employment records indicated that appellant worked for the employing establishment as a marine machinist from 1973 to 1975 and was exposed to noise from chipping hammers, grinders, welders, engines, ventilation fans and cranes for eight hours a day. From 1975 to 1993, appellant worked as a metals examiner and was exposed to noise from welders, chipping guns, grinders, motors and generators for eight hours a day. He was provided with hearing protection throughout his career. Prior to his federal employment, appellant was in the U.S. Army from 1971 to 1973.

In an August 22, 2011 report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist, noted that in 2008 OWCP accepted appellant's claim for binaural hearing loss and determined that his hearing loss was nonratable. He related appellant's statements that his hearing loss had progressed in severity since the prior claim and that he had increased difficulty in understanding communication when background noise was present or when watching television. An August 17, 2011 audiogram obtained by Dr. Randolph revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hertz: 5, 10, 5 and 5 for the right ear and 5, 5, 10 and 15 for the left ear. Dr. Randolph reviewed appellant's history and examined his ear canals. He observed that appellant's auditory canals and tympanic membranes were normal and that air conduction was greater than bone conduction bilaterally. Dr. Randolph diagnosed bilateral sensorineural hearing loss. He concluded that appellant continued to have nonratable hearing loss in both ears. Regarding the issue of hearing aids, Dr. Randolph concluded that appellant's hearing loss had not deteriorated to the point where hearing aids would be needed.

On September 21, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish his hearing loss claim and requested additional factual and medical evidence to support his claim.

In an October 6, 2011 statement, appellant responded to OWCP's development letter. He stated that after September 24, 2008 he worked as a metals examiner and was exposed to noise from welders, chippers, grinders, motors and generators. Appellant wore earplugs. He also reported that he had not been employed since he retired in July 2010 and did not have any hobbies involving exposure to loud noise.

By decision dated November 4, 2011, OWCP accepted appellant's claim for binaural hearing loss, but denied a schedule award on the grounds that his loss was not ratable. It further determined that the medical evidence did not support authorization for hearing aids.

² The record indicates that OWCP previously accepted appellant's claim for nonratable binaural hearing loss.

LEGAL PRECEDENT

OWCP is required by section 8103 of FECA to provide all medical care necessary as a result of an employment injury.³ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁴ Following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be payable if any employment-related hearing loss exists.⁵

ANALYSIS

Appellant contends on appeal that he is entitled to hearing aids for his accepted binaural hearing loss. He does not dispute OWCP's findings that he was not entitled to a schedule award for his nonratable binaural hearing loss.

The Board finds that OWCP properly denied appellant's request for hearing aids. As noted, hearing aids and other medical benefits may still be payable if an employment-related hearing loss exists. OWCP is obligated to pay for medical treatment of a work-related injury.⁶ The Board finds that appellant did not meet his burden of proof in this case. In the August 22, 2011 report, Dr. Randolph reviewed a current audiogram and conducted an examination. He noted appellant's previously accepted claim for nonratable binaural hearing loss and found that appellant's hearing loss was still not ratable. In addressing the issue of hearing aids, Dr. Randolph stated that appellant's hearing loss had not progressed to the point at which hearing aids were required.

Although appellant contends that he is entitled to hearing aids, he did not submit any medical evidence to establish entitlement to hearing amplification. Because the record does not contain any rationalized medical opinion to demonstrate that hearing aids were medically necessary, appellant did not meet his burden of proof in this case.

CONCLUSION

The Board finds that appellant was not entitled to hearing aids for his accepted nonratable binaural hearing loss.⁷

³ 5 U.S.C. § 8103.

⁴ *Kenneth O. Collins, Jr.*, 55 ECAB 649 (2004); *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

⁵ See *A.S.*, Docket No. 10-2048 (issued June 7, 2011); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400(3)(d)(2) (March 2010).

⁶ *Supra* note 3.

⁷ The Board notes that appellant submitted additional evidence following the November 4, 2011 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 18, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board